

REMARKS

Claims 1-13 are pending in the application. Claims 1, 2 and 10 have been amended in view of the Examiner's rejections. Claims 4-6 and 9 are withdrawn. New claims 11-13 have been added. Support for these claims can be found throughout the specification, for example on pages 32-33 and 37-39, as well as original claim 8. Applicants reserve the right to prosecute any withdrawn or canceled subject matter in one or more continuation or divisional applications.

The Examiner has objected to the title of the invention as not appropriately descriptive. Applicants have amended the title to recite "Porcine CD59 protein, nucleic acids and cells containing the same". Applicants believe this amendment addresses the Examiner's objection.

The Examiner has rejected claims 1-3, 7 and 8 under 35 U.S.C. §112, second paragraph for recitation of the word "substantially". The amended claims do not contain this term. Similarly, the Examiner has objected to the term "corresponding to" in claim 1. This term has been removed from claim 1. The Examiner has also rejected claim 10, asserting that it is not clear if the claim is directed to a pair of primers or single primers selected from the list. The claims have been amended to clarify that the primers are individually listed.

The Examiner has rejected claims 1-3, 7 and 8 under 35 U.S.C. §112, first paragraph as not fully enabled. Applicants were very pleased to note that the Examiner acknowledges that the claims are enabled for isolated nucleic acids encoding the polypeptide set forth in SEQ ID NO. 2, or the full length complement thereof. However, the Examiner asserts that the specification does not reasonably provide enablement for sequences substantially homologous to such nucleic acids, sequences hybridizing to the nucleic acids, or fragments thereof. Solely in the interest of promoting prosecution, the claims have been amended to recite nucleic acids encoding a polypeptide of SEQ ID NO:1 (SEQ ID NO:1 specifically identifies the polypeptide sequence set forth in SEQ ID NO:2).

The Examiner has also rejected claim 1-3, 7 and 8 under 35 U.S.C. §112, first paragraph for failing to comply with the written description requirement. The Examiner has asserted that, with the exception of sequences encoding peptides of SEQ ID NO:2 (now SEQ ID NO:1), the skilled artisan could not envision the detailed chemical structure of the nucleic acids. Although

Applicants disagree with the Examiner, in the interest of promoting prosecution, the claims have been limited to nucleic acids encoding a polypeptide of SEQ ID NO:1.

Lastly, the Examiner has also rejected the pending claims under 24 U.S.C. §102(b) as anticipated by Rushmere, et al. (1994) *Biochem. J.* 304:595-601. As noted by the Examiner, Rushmere describes rat CD59. As pointed out in the specification on page 19, the porcine CD59 sequence identified in the specification is only 46.5% identical to rat CD59. The Examiner has based this rejection on the previously claimed nucleic acids “substantially homologous” to nucleic acids encoding pig CD59. As noted above, solely in the interest of promoting prosecution, the claims have been limited to nucleic acids encoding peptides of SEQ ID NO:1. Applicants believe that the amendments to the claims address the Examiner’s rejections and render this rejection moot.

No additional fees are believed to be due in connection with this Response. The Commissioner is authorized to charge any underpayment of fees to Deposit Account No. 11-0980.

Respectfully submitted,

/REBECCA J. KAUFMAN/

Rebecca J. Kaufman, Esq.
Reg. No. 44,819

KING & SPALDING LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309-3521
Telephone (404) 572-4600
Facsimile (404) 572-5134